

Application No. 10/672,689
Amdt. dated June 17, 2005
Reply to Office action of May 17, 2005

Remarks/Arguments

Claims 25-51 are pending in this Application. In the Office Action mailed on March 31, 2004, the Examiner requested the claims be restricted to one (1) of three (3) inventions that include:

- I. Claims 1-19, drawn to a method of preparing a cell-free tissue replacement, classified in class 623, subclass 915;
- II. Claims 20-30, drawn to a native, cell-free tissue replacement classified in class 424, subclass 422; and
- III. Claims 31-40, drawn to an optimized acellular graft, classified in class 435, subclass 395.

Applicants respectfully address the basis for the Examiner's restriction below.

Restriction/Election

The Examiner requested that the claims be restricted to one of three inventions. Applicants hereby provisionally elect, *with traverse*, Group I—claims 1-19, drawn to method of preparing a cell-free tissue replacement.

Traversal is based on the fact that a thorough search of the subject matter of claims 1-19 as well as claims 20-30 and 31-40 would necessarily include all art classifications 424 and 435 cited by the Examiner. As such, examination of claims 20-40 on the merits would impose no additional burden on the Patent Office. *See* MPEP 803. Furthermore, traversal is based on the fact that the groups are within the same statutory subject matter.

Supplemental Election

As required by the Action, Applicants elect provisionally, *with traverse*, the Species set forth as a "bioactive agent," as shown in claim 4, and Applicants elect provisionally, *with traverse*, the "bioactive agent" set forth as a "drug" in claim 7.

Traversal is based on the fact that Species set forth in claim 4 and claim 7 are not patentably distinct Species, rather different components of the elected Group I—claims 1-19. For example, claim 4 adds the further limitation of adhering one or more components to the tissue replacement before storing and lists some of the components that may be used. Each type of components is not a different Species. Similarly, claim 7 further limits the bioactive compound to select types of compounds, each compound does not constitute not patentably distinct Species. Additionally, each Species is in the same type of statutory subject matter and would impose no additional burden on the Patent Office.

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Under the supplemental election for claim 4, would the Applicants therefore be entitled to 4 patents, one for each proposed species (e.g., one for a cell, one for a polymer, one for a bioactive agent, and one for combinations thereof)? In contrast, a patent in the chemical arts would not be restrict in such a manner, e.g., where the R group of a compound is a different element yet the elements have similar properties. Therefore, applicants submit that "supplemental elections" do not constitute separate patentably distinct Species and request *traversal* of the request for said supplemental elections.

Conclusion

In light of the remarks and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Favorable consideration and allowance of the pending claims 1-20 are therefore respectfully requested.

Applicants believe no fees are due at this time. If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,



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